

COA # 44852-1-II

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

GLEND A NISSEN, an individual,

Appellant,

v.

PIERCE COUNTY, a public agency; PIERCE COUNTY
PROSECUTOR'S OFFICE, a public agency,

Respondent,

v.

PROSECUTOR MARK LINDQUIST,

Intervenor/Respondent.

CORRECTED REPLY BRIEF OF APPELLANT

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I. SUPPLEMENTAL STATEMENT OF THE CASE

A. Facts Relevant to Timeliness of Motion for Reconsideration.

Respondent Pierce County (“County”) has misstated certain procedural events through selective designation of Clerk’s Papers and deliberate omission of others and a misstatement of the history of this case. A true and correct copy of the docket in this case below is filed herewith as **Appendix A with an authenticating declaration**. Documents neglected by Respondent relevant now due to the claims it now makes have been designated as Clerk’s Papers (see **CP 723-726, 793-796**) and, as promised in the 4/3/13 Reply Brief, this Corrected Reply Brief with the CP page numbers just assigned is being filed now.

All parties agree that the trial court granted the motion to dismiss on Friday, December 23, 2011. CP 258-59. Ten days from that day was Monday, January 2, 2012, which was a court holiday. What Pierce County hides from this Court is that the following court day, **on Tuesday, January 3, 2012**, Appellant Glenda Nissen (“Nissen”) filed and served her Motion for Reconsideration, see sub. #s 72 & 76 App. A, Ex. A and **CP 733-772, 776-778**. The Motion for Reconsideration was thus timely filed as it was filed within eleven calendar days of the decision as the tenth day was a court holiday and the eighth and ninth days were a weekend. Nissen simultaneously filed on January 3, 2012, a Motion to file

Overlength Brief, as it was unclear whether a motion for reconsideration was subject to a 15 page or a 25 page limit. Sub. # 75 App. A, Ex. A and CP 773-775, 778. Pierce County refused to provide certain essential records needed for the supporting declaration until January 4, 2012, so the Mell Declaration was filed the morning of January 5, 2012, explaining the delay caused by the County in refusing to provide exhibits until late January 4th. See CP 374-402; see also App. B (Jonathan Tretheway Decl.). Both the Mell and Tretheway Declarations show the records were not available on January 3, 2012, as the County required payment of \$3.15 before they would be released, and when Mr. Tretheway called the morning of January 3, 2012, he was told they were in storage and could not be retrieved or made available until the following afternoon. CP 375¹ and App. B.² The County did not dispute these events below and only belated tries to recast the events. The certificate of service shows the only new document filed and served on January 5, 2012, was the Mell Declaration and not a new Motion for Reconsideration (CP 779-781). On January 4, 2012, the County emailed Nissen's attorneys to complain that one reference to Mark Lindquist's phone number had not been redacted on page 3 of the January 3rd reconsideration motion, and the County demanded that a redacted version be re-filed. App. B at ¶¶6-11 & Exs. 2-4.

¹ A declaration signed the day after the event, on January 4, 2012.

² Tretheway declaration comporting with CP 375.

Mr. Tretheway complied with the County's demands and had a duplicate copy of the January 3, 2012, motion re-filed on January 5, 2012, with just the one phone reference redacted with a black marker. **Id.**; CP 633, 635. The trial court docketed the duplicate motion for reconsideration a second time on January 5, 2012, and designated it as sub number 79. Sub # 79 App. A, Ex. A and CP 633-672. It was this sub number the County chose to designate as Clerk's Papers, not the correct one of sub 72 filed on January 3, 2012. CP 449. The County then argued the motion had not been timely filed, although its filings below clearly show it knew the original filing of the motion was January 3, 2012, an event it pretended in its appellate Respondent's Brief had not occurred, and even now fails to admit that the January 5, 2012, re-filing had only been done at the County's insistence. See App. B at ¶¶6-11 & Exs. 2-4. Compare CP 673-677 with County Corrected Brief of Respondent at 7-9.

On January 24, 2012, in an email to the County and Nissen, the trial court ruled on the motion to file overlength brief allowing Nissen 20 pages and ordering her to file an amended motion by January 26, 2012. See Chris Roslaniec Decl. authenticating attached email string between Judge's Clerk and all counsel re: decision and due date for amended motion, filed herewith as **App. F, Ex. A.** Nissen complied and filed the Amended Motion on January 26, 2012. CP 408-443. The court further

ordered that the motion be heard on February 3, 2012, without oral argument. **App. F., Ex. A.** On February 28, 2012, the trial court denied the Motion for Reconsideration with no findings. CP 447. This appeal was timely filed on March 27, 2012. Sub # 99 App. A, Ex. A and **CP 783-792.**

B. Facts Contradicting the County's Claims It Never Possessed or Used Unredacted Phone Records.

In its Response Brief, the County claims it never possessed or used unredacted phone records. A sworn declaration submitted below shows these statements are not true. Pierce County Public Records Officer Joyce Glass in a sworn declaration filed January 31, 2012, admitted that she was given unredacted copies of the phone records to make redactions for production to Nissen in response to the PRA requests:

[To respond to August 2011 request] I was allowed access to work on the unredacted copies along with the Assistant Chief Deputy...[to respond to 9/13/11 PRA request] Prosecutor Lindquist again had his unredacted records reviewed by the Civil Division. After Prosecutor Lindquist's review and consultation with the Assistant Chief Civil Deputy, I was instructed to redact much of the same material as had been reacted earlier.

CP 445.

II. LEGAL AUTHORITY AND ARGUMENT

A. Motion for Reconsideration was Timely Filed and County should be Sanctioned for Meritless Argument.

Nissen filed her Motion for Reconsideration **on Tuesday, January 3, 2012.** Sub # 72 App. A, Ex. A and **CP 733-772, 776-777.** Monday,

January 2, 2012, was the tenth day after the order granting the motion to dismiss but was a court holiday, so filing on January 3, 2012, was timely. CR 6(a). Respondent Pierce County and its counsel Daniel Hamilton knew Nissen filed her Motion on January 3, 2012, but misstated the facts to this Court taking advantage of the fact it had demanded Nissen re-file the same motion on January 5, 2012, with an additional redaction and that there thus was a duplicate copy of the motion on the docket as filed January 5, 2012.³ The County designated as Clerk's Papers the January 5th copy and failed to designate the actual filing on January 3, 2012, **or even admit it had occurred or that the County was the one to insist on the January 5th re-filing in the first place.** The County knew its claim the motion was late had no merit and was false perhaps hoping to take advantage of new appellate counsel and the County's deliberately incomplete Clerk's Papers record. The County's attorney received the email from the Judge's Clerk granting permission to file an overlength brief and instructing Nissen to submit an amended brief by January 26, 2012, which Nissen did. **App. F.** Appellate Counsel for Nissen has been forced to spend several hours investigating the alleged facts and addressing the meritless argument

³ When Nissen's current counsel filed her original Reply Brief she was unaware the County had demanded a new filing of the January 3, 2012, motion so had assumed it was a messenger mistake. Counsel learned while responding to the County's subsequent motions that the County in fact insisted the January 3, 2012, motion be re-filed with a single additional redaction, making the County's distortion of the filing date even more disturbing and sanctionable.

raised by the County. See App. A (counsel declaration setting forth costs and fees incurred). The County and its attorney should be sanctioned pursuant to CR 11 and RAP 18.9 for submitting a brief that they knew to include a meritless argument and for misrepresenting the facts to this Court. Further, even if the motion had been filed two days late as the County alleged, which the record clearly shows it was not, the argument would be invalid as Respondents failed to raise the issue at any point below including when responding to the motion for reconsideration, and failed to raise it in their Response to the Statement of Grounds, and thus such argument would have been waived even if it had been based on truthful facts. Further, the trial court ordered that an amended motion be filed by an extended date and actually ruled upon the motion for reconsideration, defeating the County's argument. The bizarre, belated and dishonest claim made by the County is sanctionable and an illustration of the over-reaching, inaccurate and unreliable claims made by the County elsewhere in its brief and below.

B. The 861 Phone Records Are a "Writing" and "Public Record"

The 861 phone records and text messages are clearly a "writing" under the PRA.

"Writing" means handwriting, typewriting, printing, photostating, photographing, and **every other means of recording any form of communication** or representation

including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including **existing data compilations from which information may be obtained or translated.**

RCW 42.56.010(3) (emphasis added).

The 861 phone records and text messages contain information relating to the conduct of government. RCW 42.56.010(2). The elected prosecutor and County have admitted that the phone records include work-related calls, and that the text messages at issue were work-related, and not personal, text messages. Who a prosecutor calls or is called by for admittedly work-related calls, how long he talks on such calls and when he talks to the other participants (during the work-day or after hours and the precise date and time) all relate to the conduct of government. And the text messages the prosecutor sends that he admits are work-related are the conduct of the prosecutor's official governmental duties and thus relates to the conduct of government. In addition, some of the work-related texts are known to have been between the prosecutor and Ed Troyer of the Pierce County Sheriff's Department. CP 366-68 (Troyer Phone Records).

Respondents next pretend that only records "prepared" by a government entity can become public records, forgetting that the statute states that any record "owned, used, retained or prepared" by any state or

local agency qualifies as public records. RCW 42.56.010(2). Nissen has already shown why the prosecutor's creation of the work-related texts constitutes "preparation" by the agency. Respondents have not legitimately challenged this showing, but again, it is but one of four ways these records become public records.

Lindquist "owns" the texts, both in his personal and official capacity. He has ordered Verizon to retain them for purposes of litigation in his official capacity. See, e.g., CP 58-60; RP 12/2/11; sealed docket sub 55.99 as **CP 797-801** (Daniel Hamilton Decl. with attached attorney Mike Patterson letter to Verizon ordering preservation of text messages on behalf of Lindquist as Pierce County Prosecutor.⁴) The recipients also "own" the texts they received and sent to Lindquist, and as the texts are admitted to be work-related, it is known that at least some of the texts were between the prosecutor and Troyer of the County Sheriff's Department. CP 366-368. Nissen has shown why Lindquist is the agency for purposes of the PRA analysis when examining these admittedly work-related texts of the elected prosecutor sent and received on the phone he deliberately uses to send and receive work-related texts instead of his County-provided phone. CP 22-42. Respondents have not legitimately

⁴ It is not clear why counsel's declaration would be sealed in its entirety as it reveals no confidential information. A designation of this sub number was filed with the trial court so the Court may receive a copy even as a sealed document.

challenged that legal conclusion.

Lindquist, the recipients, and the County further “used” these work-related texts, as they used the information and instructions contained in them in the performance of their duties.

Lindquist and the County should be deemed to have “retained” the texts, as Verizon was ordered by the County to preserve the texts as evidence in conjunction with a lawsuit against the County, and Lindquist ordered them retained in his personal as well as official capacity. CP 58-60; RP 12/2/11; sealed docket sub 55.99 as **CP 797-801** (Hamilton Decl.).

As for the phone records, Nissen need not prove the phone records were “prepared” by Lindquist or the County, only that they were “owned, used, retained, or prepared.” RCW 42.56.010(2). The phone records were clearly “used” by the County for a governmental purpose. The Public Records Officer admits, contrary to Respondents’ claims, that she used the unredacted phone records and reviewed and redacted them to produce to Nissen. CP 445. It is irrelevant whether or not the County obtained the records before or after the request, although in this case the record shows the September 2011 PRA request occurred after the County admitted it had obtained the records. **Id.**

Just as with the text messages, Lindquist is the agency for purposes of a PRA analysis when examining these phone records of admittedly work-

related calls the elected prosecutor chose to make and receive on the 861 cell phone instead of the County-provided one. Lindquist as the customer “owns” the phone records whether or not his carrier may “own” them as well. Lindquist “retained” them, and the County at the time of the request had possession of them and thus “retained them” at that time even though it admits it had them in its possession in unredacted form but failed to keep an unredacted copy when it redacted them and produced them to Nissen.

The record shows that the elected prosecutor tried to avoid public disclosure of his work-related activities by deliberately sending and receiving texts and cell phone calls on his 861 phone instead of the County-provided one he ought to have used. The Court cannot ignore this factual background when examining whether or not the records in this case are public records. Respondents’ threats about the scope of this ruling cannot influence this Court’s consideration of the issue in this case under this factual record. This case deals with work-related phone calls and text messages of an elected official who deliberately used his personal cell phone for his work-related activities to try and avoid disclosure and public scrutiny of the performance of his official duties. It has long been understood by public officials and employees, as the previous prosecutor illustrated in the mediation, that when an official uses his or her personal

computer for work-related business or his or her personal phone for work-related calls and texts, that the official has opened up his phone and computer to the risk of scrutiny by the government and citizens under the PRA. The Washington Supreme Court warned against allowing public officials to conduct government business on personally-paid devices without being subject to the PRA: “If government employees could circumvent the PRA by using their home computers for government business, the PRA could be drastically undermined.” **O’Neill v. City of Shoreline**, 170 Wn.2d 138, 150, 240 P.3d 1149 (2010). **O’Neill** involved an email sent to a Deputy Mayor on her personal email account and viewed by the Deputy Mayor on her personal home computer. Like here, the communication related to the conduct of government and the Supreme Court and Division One Court of Appeals before it correctly deemed the email and its metadata to be “owned, used, retained or prepared” by the agency. 170 Wn.2d 138. This Court must reach the same conclusion here and find the records to be public records.

Respondents’ citation of foreign authority does not change this required outcome. For example, Colorado’s public records law is different than Washington’s and limits public records to only those records “for use in the exercise of functions required or authorized by law or in administrative rule or involving the receipt or expenditure of public

funds.” Colo. Rev. Stat. §24-72-202(6)(a)(I). Washington’s definition of “public record” has no such restriction. **Compare** RCW 42.56.010(2) & (3). The restrictions in Colorado’s definition are important here because that state’s definition only applies to the records involving the “receipt or expenditure of public funds.” Colo. Rev. Stat. §24-72-202(6)(a)(I). If Lindquist pays for the 861 phone without public funds, then under Colorado’s definition the records would not seem to be “public records”—but the Washington PRA applies, not Colorado’s. Washington’s PRA does not require a “public record” to involve the receipt or expenditure of public funds. The PRA establishes the criteria for analyzing the public nature of any record. Whether the record was paid for from the private funds of the elected official is not determinative. Lindquist must produce any data such as a text message that he prepared, owned, used or retained that relates to the conduct of government or performance of a governmental function.

C. The Records are Not Exempt.

1. RCW 42.56.050 is Not a Stand-Alone Exemption

RCW 42.56.050 is the definition of “privacy” in the PRA, not as an exemption from disclosure. There simply is no generalized “privacy” exemption pursuant to RCW 42.56.050 or any other part of the PRA. While RCW 42.56.050 contains the test for establishing whether a right of

privacy was violated, the test is to be applied when citing an exemption from disclosure, which RCW 42.56.050 is not. RCW 42.56.050 clearly states in relevant part:

... The provisions of this chapter dealing with the right to privacy in certain public records **do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions** from the public's right to inspect, examine, or copy public records.

(emphasis added). When the State Supreme Court sought to create a generalized privacy exemption in **In re Rosier**, 105 Wn.2d 606, 609, 717 P.2d 1353 (1986), the Legislature specifically overruled the Supreme Court and stated:

The legislature intends to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in "In Re Rosier," 105 Wn.2d 606 (1986). The intent of this legislation is to make clear that ... agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records.

Laws of 1987, ch. 403, § 1, at 1546; **see also Progressive Animal Welfare Soc. v. University of Wash.** ("PAWS"), 125 Wn.2d 243, 258, 884 P.2d 592 (1994) (recognizing that just as there was no general privacy exemption there was no general "vital governmental functions" exemption).

Respondents' reliance on a dissenting opinion **O'Neill** to trump binding majority opinions of the State Supreme Court and clear language

of statutes passed by the Legislature is not effective. 1000 Virginia Ltd. Partnership v. Vertecs Corp., 158 Wn.2d 566, 578, 146 P.3d 423 (2006) (majority opinion of State Supreme Court binding on all state courts state).

2. The Records are Not Exempt Under RCW 42.56.230, .290, or 250(3).

Respondents belatedly argue that the records were exempt under RCW 42.56.230, .290 or .250(3). None of these apply to the records here or the information withheld. RCW 42.56.250(3) exempts:

The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency **that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.** ...

(emphasis added). These records are not “held by the agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers...” By its clear terms, the exemption does not apply, even if the records had been shown to contain any of the covered information, which they were not.

RCW 42.56.290 covers:

Records that are relevant to a controversy to which an agency is a

party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.

This exemption also was not shown to apply. Rather, the phone records were ordered disclosed in civil discovery in the context of mediation and given the facts of that litigation, had it not settled, the text messages would have been subject to discovery to address whether or not the Prosecutor was the one to order editing of a news article connected to Nissen's retaliation and harassment claims.

RCW 42.56.230, discussed in Section 3 below, covers a variety of types of records, but the text of the statute shows that none of them are at issue here. Respondents' attempts to argue RCW 42.56.070 is also somehow an exemption similarly fails. Section .070 is simply a redaction requirement, not a stand alone exemption or permission to redact based on privacy without reference to a specific exemption.

The burden of proof to show an exemption applies was at all times on the County and Lindquist, a burden they did not meet. As will be explained in Section D below, the County's failure to cite all relevant exemptions and explain how they applied, and to cite irrelevant or non-exemptions, is itself a PRA violation requiring a denial of the motion to dismiss.

3. The Records are not Exempt under Article I, § 7, the 4th or 14th Amendments, or the Other Belated Grounds Raised.

Respondents argue that call data on “personal” phones and text messages on “personal” cell phones cannot be compelled without a warrant and thus are exempt under the PRA. First, the facts of this case make clear that like in O’Neill the official voluntarily provided records to the agency for purposes of review and evaluation to determine what to produce in response to a PRA request. The County did not sweep in and seize the official’s phone or records, making the arguments raised by Respondents inapplicable here and irrelevant to this Court’s determination. Respondent’s constitutional arguments are overstated and incorrect, even were they applicable, since this is not akin to an agency secretly tapping a phone or installing a secret pen register on a home telephone to capture numbers called, or wading through someone’s garbage for evidence of a crime. Rather, this is an agency that reviewed records deliberately created by an elected official on a personal device that the official acknowledges were “work-related” and thus relate to the conduct of government and meet the definition of public record under the PRA. The phone records were further voluntarily turned over at the time to the agency by the official for purposes of this review and evaluation and not secretly intercepted or seized. The text messages were voluntarily ordered retained

by the official acting in his official capacity. Lindquist has no reasonable expectation of privacy in the text messages he sent. See, e.g., State v. Hinton, 169 Wn. App. 28, 280 P.3d 476 (2012), cert granted, 175 Wn.2d 1022, 291 P.3d 253 (Dec 04, 2012) (no reasonable expectation of privacy in texts sent); State v. Roden, 169 Wn. App. 59, 279 P.3d 461 (2012), cert granted, 175 Wn.2d 1022, 291 P.3d 253 (Dec 04, 2012) (same). Also, the case of Tiberino v. Spokane County, similarly does not stand for the proposition that Lindquist has a right of privacy in the records here. Tiberino v. Spokane County, 103 Wn. App. 680, 688, 13 P.3d 1104 (2000) First, Tiberino dealt with an exemption not at issue here, RCW 42.56.230(1), that covers “Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.” The case dealt with personal emails sent by a rape victim and government employee to her mother and sister describing her rape. When the employee was subsequently investigated and then disciplined for sending excessive personal emails at work, the emails became part of her personnel file related to the investigation thus meeting the basic parameters of this exemption, and a newspaper made a public records request for the emails. The Court of Appeals held that while the emails themselves from the employee to her mother and sister describing her rape were public records

(and thus relating to the conduct of government and owned, used, retained or prepared by government) the content of the emails with their extremely personal details about a rape was not of legitimate public concern as the employee and agency acknowledged the emails were personal, acknowledged how many emails were at issue (hundreds) and acknowledged the excessive amount of time that had been spent at work sending and receiving these personal emails.

This case, on the other hand, does not deal with records that can be said to be in a file maintained for an employee like Tiberino. Further, this case deals with work-related communications of the elected prosecutor, the content of which could not possibly be deemed to be anything but a matter of legitimate public concern. Unlike Tiberino, the public does require the substance of the communications here to satisfy its legitimate public concern (if the privacy test were even to apply through some other exemption, although an applicable exemption has not been cited) since the mere fact some work-related communications were made on a non-County provided device does not satisfy the interest.

4. “Not a Public Record” is not an Appropriate Exemption. Claim

Respondents contend that the agency can redact from public records information it deems not to constitute “public record information” because

it allegedly is not related to the conduct of government. This argument was rejected by the Court of Appeals in Mechling v. Monroe, 152 Wn. App. 830, 222 P.3d 808 (2009). In that case, the City of Monroe failed to claim a specific exemption for its redactions of portions of emails, claiming that the information contained in redacted portions of emails “does not meet definition of public record.” 152 Wn. App. at 839. The Court of Appeals reversed the trial court’s grant of summary judgment in favor of the City because “does not meet the definition of public record” is not an exemption from disclosure, and remanded for a determination of whether an applicable exemption applied to the records in question. Id. at 855. The redactions made by the County do not meet the basis of any exemption, and it is not a basis for redaction to parse a public record for portions allegedly relating to government conduct and those that allegedly do not. Similar parsing was attempted, and rejected, in O’Neill where the agency and deputy mayor had argued emails of her constituents were somehow not related to the conduct of government and thus exempt, but that argument failed on appeal.

D. Failure to Claim an Exemption or Explain Them is a Violation of the PRA.

Respondents persist in mischaracterizing case law to argue that a failure to state a claim of exemption or accurately explain how an

exemption applies is not a stand alone violation. Respondents are correct that an initial claim of exemption does not preclude the claim of a differing, valid, exemption following its initial response. However, failure to claim any exemption from disclosure or failure to state an exemption later argued to apply or to explain how an exemption applies to the records is still a violation of the PRA on its face. Respondents misstate the holding of Sanders v. State, 169 Wn.2d 827, 846, 240 P.3d 120 (2010) in claiming no PRA violation for its failure to identify exemptions and explain how they applied – to provide an adequate response. Sanders makes clear that there are two distinct wrongs for which one can recover under the PRA. The first is the wrong of providing an inadequate response. The second is the wrong of being denied access to a responsive non-exempt record or part of a record. As Sanders and the clear language of RCW 42.56.550(4) make clear, fees and costs are to be awarded to requestors who prevail against the agency in an action related to an inadequate response. Penalties (in addition to fees and costs) are only awarded to the requestor when he or she prevails in an action related to the denial of a record in whole or in part. Here, Nissen was denied an adequate response. The County failed to cite all applicable exemptions it contended applied, the County cited exemptions having no application to the records, and the County persists through this appeal in making up new

exemption claims as it goes. The County has never explained how those alleged exemptions actually apply and it is clear from their text they cannot apply to the records here.

Requestors are entitled to an adequate and honest answer from an agency at the time their requests are denied as to all exemptions the agency contends apply and how those exemptions apply to the records. A requestor is not obligated to prove the agency wrong—the agency bears the burden of proof at all times—but a requestor is entitled to know the basis up front of the agency's claims so he or she can decide whether or not to pursue litigation stemming from the denial. When a requestor is forced to litigate, as Nissen was here, to obtain an adequate response, the requestor must be compensated her reasonable fees and costs. The statute does not require she prove a record was actually withheld that was not exempt to be mandatorily entitled to this fee and cost award. The trial court erroneously granted the motion to dismiss and denied Nissen her fees and costs stemming from the fact that the County did not provide an adequate response.

The cases cited by the County all deal with the issue of penalties – something that will only be an issue if a non-exempt record were withheld, but those cases do not stand for the proposition that a failure to provide an adequate response is not a PRA violation entitling the requestor to fees

and costs, although not penalties. Sanders holds otherwise, as does the clear language of RCW 42.56.550(4). The cases cited by Respondents do not support a claim that an agency can fail to cite an exemption, fail to explain how it applies, or cite irrelevant exemptions or non-exemptions, and avoid PRA liability. A failure to provide an adequate response is a PRA violation. The record is clear the County did not cite a relevant exemption or explain how it applies and that the County is making up new exemption arguments as it goes even now.

Because Nissen was also denied non-exempt public records she must additionally be awarded penalties, as well as her fees and costs, with the inadequate response serving as an aggravating factor and multiplier. See Sanders.

E. Discovery Should Have Been Allowed or the Evidence Outside the Record Cited for the Motion to Dismiss Stricken.

The County argued at oral argument on its motion to dismiss that the County never possessed the unredacted records and thus the records were not public records. This was a factual claim not found in the complaint. It was a claim that now appears not to have been true, at least as to the phone records, where the County's Public Records Officer has now admitted to having possessed and used unredacted phone records both before and after requests. CP 445. Nissen wished to conduct discovery to explore the issue

of whether or not the records were “public records” including whether they were owned, used, retained or prepared by the government and whether they had been in the possession of the government prior to any of the PRA requests. Respondents concede these issues are important to determining whether or not the records can be public records, but argue that Nissen and the trial court were required to merely accept the County’s claims without any opportunity to investigate them. There is no support for this premise. The trial court was hearing a CR 12(b)(6) Motion. The trial court was required to take as true all facts in the complaint. The trial court was not allowed to take “judicial notice” of the bald statements of counsel for a party as evidence and deny the plaintiff the opportunity to test the validity of such statements. Nissen should have been afforded discovery, or the trial court should have stricken and not relied upon the alleged evidence the County asserted beyond the complaint.

Lindquist’s belated argument that this Court should uphold the motion to dismiss because the trial court “would likely” have granted the TRO he sought should be rejected as it has been waived and there is no basis for finding the TRO which the court did not actually grant “would likely” have been granted or that such a grant would have been proper. An injunction still requires proof of an exemption and additionally requires harm to a person or property or a vital government interest. Respondents

did not prove an exemption, and failed to prove the required harm in addition to an exemption.

F. Court Can and Must Perform In Camera Review Before Ruling Records are Exempt.

Lindquist and the County argue the court could not perform an in camera review of the records he voluntarily submitted to the agency in unredacted form to review for purposes of a production under the PRA and Lindquist argues the court and agency cannot obtain the admittedly “work-related” text messages he sent or received. These arguments are based on analogies about search and seizure and surreptitious phone tapping and surveillance, not cases involving public record requests for records clearly meeting the definition of a public record under Washington law in the context of an in camera review to determine if records are exempt or not in a PRA lawsuit. A court can and must review in camera records before determining they are exempt, especially when the basis for the exemption is based on claims of privacy stemming from the context of the records.

G. The Trial Court Unlawfully “Sealed” Court Filings Disclosing a Publicly-Available Cell Phone Number.

Nissen discussed at length the impropriety of the trial court’s “sealing” and redaction of court filings that disclosed the complete 861 cell phone number. The number was published by Lindquist on his candidate

application and website when he ran for office and had been public in this fashion for years at the time of requested “sealing.” It had been disclosed in public records to Nissen and her attorney. The trial court violated GR 15, Article I, Section 10, the First Amendment to the United States Constitution and the common law in ordering publicly-filed court documents “sealed” and redacted solely to protect this number. The procedure utilized by the trial court violated Article I, Section 10 and **Seattle Times v. Ishikawa**, 97 Wn.2d 30, 640 P.2d 716 (1982). The sealing should be reversed.

III. CONCLUSION

For the reasons set forth above, Nissen respectfully requests that this Court overturn the trial court’s grant of the motion to dismiss, award her her attorney’s fees, costs and statutory penalty, unseal the improperly sealed documents, and remand for further proceedings and in camera review.

RESPECTFULLY SUBMITTED this 18th day of April, 2013.



Attorneys for Appellant Glenda Nissen

By *Michele L. Earl-Hubbard*

Michele L. Earl-Hubbard, WSBA #26454
P.O. Box 33744, Seattle, WA 98133
(206) 443-0200 (phone); (206) 428-7169 (fax)

CERTIFICATE OF SERVICE

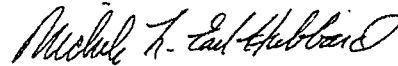
I certify under penalty of perjury under the laws of the State of Washington that on April 19, 2013, I caused the delivery of a copy of the foregoing Corrected Reply Brief of Appellant and Appendices A, B and F to the following by the method indicated:

By email pursuant to agreement and by U.S. Mail:

Dan Hamilton
955 Tacoma Ave S., Suite 301
Tacoma, WA 98402-2160
dhamilt@co.pierce.wa.us

Stewart Estes
800 Fifth Avenue, Suite 4141
Seattle, WA 98104-03175
sestes@kbmlawyers.com

Dated this 19th day of April, 2013, at Seattle, Washington.



Michele Earl-Hubbard

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Apr 19, 2013, 1:07 pm
BY RONALD R. CARPENTER
CLERK

No. 87187-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

RECEIVED BY E-MAIL

GLEND A NISSEN, an individual,

Appellant,

v.

PIERCE COUNTY, a public agency; PIERCE COUNTY
PROSECUTOR'S OFFICE, a public agency,

Respondent,

v.

PROSECUTOR MARK LINDQUIST,

Intervenor/Respondent.

**APPENDICES A, B and F
TO CORRECTED REPLY BRIEF OF APPELLANT**

Michele Earl-Hubbard, WSBA #26454
Allied Law Group
P.O. Box 33744
Seattle, WA 98133
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Fax: (206) 428-7169

ALLIED
LAW GROUP

Attorneys for Appellant

APPENDIX A
To Corrected Reply Brief of Appellant

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IN THE WASHINGTON STATE SUPREME COURT

GLEND A NISSEN, an individual,
Appellant,

vs.

PIERCE COUNTY, a public agency; PIERCE
COUNTY PROSECUTOR'S OFFICE, a public
agency,

Respondents,

vs.

PROSECUTOR MARK LINDQUIST,
Intervenor/Respondent.

No. 87187-6

**DECLARATION OF MICHELE
EARL-HUBBARD; CERTIFICATE
OF SERVICE**

Michele Earl-Hubbard declares and states as follows:

- 1. I am the attorney for Appellant Glenda Nissen in this appeal.
- 2. I am over the age of 18 and competent to testify to the matters hereto. I make

this declaration on personal knowledge.

- 3. Attached hereto as **Exhibit A** is a true and correct copy of the docket for the trial court level of this case before the Thurston Superior Court. It clearly reflects that the Motion for Reconsideration was first filed on January 3, 2012, and then re-filed on January 5, 2012, and January 26, 2012. I was not much involved with the trial court level work in this case, although Daniel Hamilton clearly was. I now understand that my former colleagues

1 who represented Ms. Nissen at that time had designated the January 26, 2012, version of the
2 Motion for Reconsideration as Clerks Papers and not the January 3, 2012, version as the
3 January 26th version was the operative version of the brief as the trial court granted a motion
4 to file overlength brief and instructed that it be re-filed at 20 pages in length by January 26th,
5 but also that the January 3rd original filing had had a reference to a phone number included
6 that the County contended should have been redacted. Mr. Hamilton knew this history as it
7 was his office that had demanded the January 3rd version be re-filed and he was included on
8 several emails, attached to the Declaration of Jonathan Tretheway being filed with this
9 Declaration, as well as several emails between Mr. Hamilton, my former colleagues Chris
10 Roslaniec and Greg Overstreet, and the trial court related to the granting of the motion to file
11 an overlength brief and instructions regarding the re-filing and hearing date of the
12 reconsideration motion. A copy of the latter emails are attached to my former colleague Chris
13 Roslaniec's Declaration, also filed with this Declaration.

14 4. I have now spent more than 25 hours at a rate of \$410 per hour for fees of
15 more than \$10,250 and incurred costs of more than \$450 for additional, and previously-
16 unnecessary, Clerks Papers, as a result of the false and inaccurate factual claims made by Mr.
17 Hamilton and the County in their Brief of Respondent and their current motions. Joan Mell
18 and her legal assistant Jonathan Tretheway have had to spend more than a day away from
19 their regular billable work tracking down information for me and assisting with the drafting of
20 a declaration. My former Associate Chris Roslaniec had to spend approximately three hours
21 today away from his regular billable work at his new firm preparing a declaration for me for
22 the response to the County's motions.

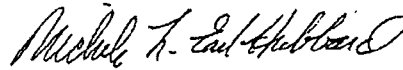
23 5. Ms. Nissen, and her lawyers, current and former, have all been damaged to the
24 tune of more than more than \$15,000 because of the inaccurate claims made by the County

1 and its current motions. (My fees to Ms. Nissen in this case are contingent, and her lawyers
2 have all had to displace regular billable work responding to the County's faulty claims and
3 motions, resulting in an actual revenue loss to our firms as a result.) I suspect this was not
4 unintentional and that Mr. Hamilton and the County sought to distract Appellant and her
5 counsel and to force us to spend time debunking a bogus claim and false set of facts to detract
6 attention from the many legitimate issues presented by Appellant in this appeal.

7 6. I would be happy to make my request for sanctions a separate "motion" against
8 Mr. Hamilton and the County if that is what it takes to have the County penalized for wasting
9 both Appellant's and this Court's time making claims it knew to be false, with a record it
10 knew to be inaccurate and misleading, but I note that the parties and this Court have already
11 spent an inordinate amount of time on this subject and this Court is now fully able to rule and
12 grant such order for sanctions against Mr. Hamilton and the County based on the record
13 before it. I urge the Court to do so. There must be consequences for Mr. Hamilton and the
14 County for doing what they have done to deter them and others from such behavior in the
15 future and to compensate those they damage as they have done to my firm, client, and her
16 other attorneys.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Signed this 18th day of April, 2013, at Shoreline, Washington.

19 

20 Michele Earl-Hubbard

EXHIBIT A
To Earl-Hubbard Declaration



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Superior Court Case Summary

About Dockets

Court: Thurston Superior
Case Number: 11-2-02312-2

About Dockets

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	10-26-2011	CASE INFORMATION COVER SHEET	Case Information Cover Sheet	
2	10-26-2011	FILING FEE RECEIVED	Filing Fee Received	230.00
3	10-26-2011	NOTICE OF ASSIGNMENT ACTION	Notice Of Assignment Pra-scheduling Conference	11-18-2011M6
4	10-26-2011	SUMMONS	Summons	
5	10-26-2011	COMPLAINT	Complaint	
6	11-03-2011	NOTICE OF APPEARANCE	Notice Of Appearance	
7	11-04-2011	MOTION HEARING JDG0006	Motion Hearing Judge Christine A. Pomeroy Cc Shackley Cr Jones	
8	11-04-2011	AFFIDAVIT IN SUPPORT	Affidavit In Support M Lindquist	
9	11-04-2011	AFFIDAVIT IN SUPPORT	Affidavit In Support J Glass	
10	11-04-2011	AFFIDAVIT IN SUPPORT	Affidavit In Support Supp Lindquist	
11	11-04-2011	DECLARATION	Declaration In Opposition J K Mell	
12	11-04-2011	DECLARATION	Declaration In Opposition L Paluck	
13	11-04-2011	DECLARATION	Declaration In Opposition G Nissen	
14	11-04-2011	MOTION	Motion Def's To Shorten Time	
15	11-04-2011	MOTION	Motion Def's To Strike	
16	11-04-2011	AFFIDAVIT IN SUPPORT	Affidavit In Support D R Hamilton	

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

Thurston Superior
 2000 Lakeridge Dr
 SW, Bldg 2
 Olympia, WA
 98502

Map & Directions
 360-786-5560
 [Phone]
 360-754-4060[Fax]

17	11-04-2011	ORDER OF REDACTION	Order Of Redaction	
18	11-04-2011	ORDER SHORTENING TIME	Order Shortening Time	
19	11-07-2011	DECLARATION	Declaration In Opposition Joan Mell	
20	11-07-2011	COMPLAINT	Complaint	
21	11-08-2011	DECLARATION	Declaration J K Mell In Opposition	
22	11-18-2011	STATUS CONFERENCE / HEARING JDG0006	Status Conference / Hearing Cc Shackley Cr Jones Judge Christine A. Pomeroy	
23	11-22-2011	DECLARATION	Declaration M Linquist	
24	11-23-2011	NOTICE OF ISSUE ACTION	Notice Of Issue Motion To Intervene	12-02-2011M6
25	11-23-2011	MOTION	Motion To Intervene And Join	
26	11-23-2011	ORDER ON STATUS CONFERENCE ACTION	Order On Status Conference Cr 12 Motion Oral Argument	12-23-2011N6
-	11-23-2011	EX-PARTE ACTION WITH ORDER	Ex-parte Action With Order	
27	11-28-2011	NOTICE OF ISSUE ACTION	Notice Of Issue Tro/preliminary Injunction 1:30	12-23-2011N6
28	11-28-2011	MOTION	Motion-tro/preliminary Injunction	
29	11-28-2011	NOTICE OF ISSUE ACTION	Notice Of Issue Summary Judgment	12-23-2011N6
30	11-28-2011	MOTION TO DISMISS	Motion To Dismiss	
31	11-30-2011	ORDER	Order Allowing Intervention/joinder	
-	11-30-2011	EX-PARTE ACTION WITH ORDER	Ex-parte Action With Order	
32	12-02-2011	HEARING CANCELLED: COURT'S REQUEST	Hearing Cancelled: Court's Request Pomeroy Cc Shackley	
33	12-09-2011	NOTICE OF ISSUE ACTION	Notice Of Issue Motion To Preserve Records	12-16-2011M6
34	12-09-2011	MOTION	Motion To Preserve Evidence	
35	12-09-2011	AFFIDAVIT IN SUPPORT	Affidavit In Support G Overstreet	

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What is this website? It is an index of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. This index can point you to the official or complete court record.

How can I obtain the complete court record?

You can contact the court in which the case was filed to view the court record or to order copies of court records.

How can I contact the court?

Click [here](#) for a court directory with information on how to contact every court in the state.

Can I find the outcome of a case on this website?

No. You must consult the local or appeals court record.

How do I verify the information contained in the index?

You must consult the court record to verify all information.

Can I use the index to find out someone's criminal record?

36	12-09-2011	AFFIDAVIT IN SUPPORT	Affidavit In Support J K Mell		No. The Washington State Patrol (WSP) maintains state criminal history record information. Click here to order criminal history information.
37	12-09-2011	DECLARATION	Declaration J S Tretaway		
38	12-09-2011	PROPOSED ORDER/FINDINGS	Proposed Order/findings		
39	12-09-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
40	12-13-2011	NOTICE OF ISSUE ACTION	Notice Of Issue Motion To Preserve Records-1:30	12-23- 2011M6	
41	12-13-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
42	12-15-2011	RESPONSE	Response		
43	12-15-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
44	12-16-2011	HEARING CONTINUED: STIPULATED	Hearing Continued: Stipulated Pomeroy Cc Nastansky		
45	12-16-2011	NOTICE OF ISSUE ACTION	Notice Of Issue Amended Motion To Exclude Or Continue	12-23- 2011M6	
46	12-16-2011	MOTION	Motion To Exclude		Where does the information in the index come from? Clerks at the municipal, district, superior, and appellate courts across the state enter information on the cases filed in their courts. The index is maintained by the Administrative Office of the Court for the State of Washington.
47	12-16-2011	DECLARATION	Declaration Greg Overstreet		
48	12-16-2011	PROPOSED ORDER/FINDINGS	Proposed Order/findings		
49	12-16-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
50	12-19-2011	NOTICE	Notice Of Failure To Oppose		
51	12-21-2011	OBJECTION / OPPOSITION	Objection / Opposition		
52	12-21-2011	REPLY	Reply To Opposition		
53	12-21-2011	OBJECTION / OPPOSITION	Objection / Opposition		
54	12-21-2011	OBJECTION / OPPOSITION	Objection / Opposition Of Def		
55	12-21-2011	CONFIDNTL REPORT IN SEALED ENVELOPE	Confidntl Report In Sealed Envelope		
55.99	12-21-2011	DECLARATION	Declaration Daniel Hamilton		
56	12-21-2011	DECLARATION	Declaration Joyce Glass		
57	12-21-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
58	12-21-2011	DECLARATION	Declaration Joan		

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- ▶ **Guarantee that the information is accurate or complete?**
NO
- ▶ **Guarantee that the information is in its most current form?**
NO
- ▶ **Guarantee the identity of any person whose name appears on these pages?**
NO
- ▶ **Assume any liability resulting**

			Mell	
59	12-21-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
60	12-21-2011	RESPONSE	Response	
61	12-21-2011	DECLARATION	Declaration Daniel Hamilton	
62	12-22-2011	REPLY	Reply For Motion Preserve Evidence	
63	12-22-2011	DECLARATION	Declaration Of Joan Mell In Support	
64	12-22-2011	REPLY	Reply For Motion To Exclude	
65	12-22-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
66	12-22-2011	REPLY	Reply Intervenor	
67	12-23-2011	MOTION HEARING	Motion Hearing Cc Merz Cr Jones	
		JDG0006	Judge Christine A. Pomeroy	
68	12-23-2011	ORDER DISMISSING LITIGANT	Order Dismissing Litigant	
69	12-23-2011	DECLARATION	Declaration J Mell	
70	01-03-2012	NOTICE OF ISSUE ACTION	Notice Of Issue	01-13-2012M6
71	01-03-2012	NOTICE OF HEARING	Notice Of Hearing Reconsideration	01-27-2012M6
72	01-03-2012	MOTION FOR RECONSIDERATION	Motion For Reconsideration	
73	01-03-2012	PROPOSED ORDER/FINDINGS	Proposed Order/findings	
74	01-03-2012	PROPOSED ORDER/FINDINGS	Proposed Order/findings	
75	01-03-2012	MOTION	Motion To File Overlength Brief	
76	01-03-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
77	01-05-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
78	01-05-2012	DECLARATION	Declaration Joan Mell	
79	01-05-2012	MOTION FOR RECONSIDERATION	Motion For Reconsideration	
80	01-13-2012	CANCELLED: PLAINTIFF/PROS REQUESTED	Cancelled: Plaintiff/pros Requested (pomeroy) Cc Merz	
81	01-17-2012	RESPONSE	Response	
82	01-20-2012	AFFIDAVIT/DCLR/CERT	Affidavit/dclr/cert Of	

**from the
release or
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information?
NO**

		OF SERVICE	Service	
83	01-20-2012	REPLY	Reply	
84	01-23-2012	REPLY	Reply	
85	01-23-2012	DECLARATION	Declaration Kelly Kelstrup	
86	01-26-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
87	01-26-2012	MOTION FOR RECONSIDERATION	Motion For Reconsideration	
88	01-27-2012	HEARING CONTINUED: STIPULATED ACTION	Hearing Continued: Stipulated Motion For Reconsideration-1 (pomeroy) Cc Pittman	02-03-2012M6
89	01-31-2012	RESPONSE	Response	
90	01-31-2012	DECLARATION	Declaration J Glass	
91	01-31-2012	PROPOSED ORDER/FINDINGS	Proposed Order/findings	
92	01-31-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
93	01-31-2012	JOINDER	Joinder	
94	02-02-2012	REPLY	Reply	
95	02-02-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
96	02-03-2012	CANCELLED: PLAINTIFF/PROS REQUESTED	Cancelled: Plaintiff/pros Requested (pomeroy) Cc Merz	
97	02-29-2012	COURT'S DECISION	Court's Decision	
98	03-27-2012	APPELLATE FILING FEE	Appellate Filing Fee	280.00
99	03-27-2012	NOTICE OF APPEAL TO SUPREME COURT	Notice Of Appeal To Supreme Court	
100	03-27-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
101	03-28-2012	LETTER	Letter To Supreme Ct W/ Notice	
102	04-03-2012	NOTICE	Notice From Supreme Court	
103	04-27-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
104	04-27-2012	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers	
105	05-01-2012	CLERK'S PAPERS SENT	Clerk's Papers P 1-447	
106	05-01-2012	LETTER	Letter To Counsel W/ Clp Index	
107	05-24-2012	LETTER	Letter To Supreme	

-	07-20-2012	VERBATIM RPT TRANSMITTED	Ct W/ 3 Vol Clp Verbatim Rpt Transmitted 3 Vol Cr Jones 11-4-12 11-18-12 12-23-11
108	07-23-2012	LETTER	Letter To Supreme Ct W/ 3 Vol Tran
109	12-19-2012	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers
110	12-26-2012	CLERK'S PAPERS SENT	Clerk's Papers P 448-722
111	12-26-2012	LETTER	Letter To Counsel W/ Clp Index
112	01-08-2013	NOTICE OF ASSIGNMENT	Notice Of Assignment To Tabor
113	01-16-2013	LETTER	Letter To Supreme Ct W/ 2 Vol Clp
114	03-08-2013	MAIL RETURN - UNCLAIMED	Mail Return - Unclaimed

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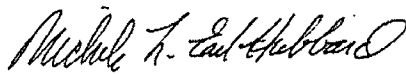
1 CERTIFICATE OF SERVICE

2 I certify under penalty of perjury under the laws of the State of Washington that on
3 April 19, 2013, I delivered a copy of the foregoing Declaration of Michele Earl-Hubbard and
4 this Certificate of Service by email pursuant to an electronic service agreement among the
5 parties with back up by U.S. Mail to the following:

6 Dan Hamilton
7 955 Tacoma Ave S., Suite 301
8 Tacoma, WA 98402-2160
9 dhamilt@co.pierce.wa.us

10 Stewart Estes
11 800 Fifth Avenue, Suite 4141
12 Seattle, WA 98104-03175
13 sestest@kbmlawyers.com

14 Dated this 19th day of April, 2013.

15 
16 _____
17 Michele Earl-Hubbard

APPENDIX B
To Corrected Reply Brief of Appellant

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IN THE WASHINGTON STATE SUPREME COURT

GLEENDA NISSEN, an individual,
Appellant,

vs.

PIERCE COUNTY, a public agency; PIERCE
COUNTY PROSECUTOR'S OFFICE, a public
agency,

Respondents,

vs.

PROSECUTOR MARK LINDQUIST,
Intervenor/Respondent.

No. 87187-6

**DECLARATION OF JONATHAN
TRETHERWAY; CERTIFICATE
OF SERVICE**

Jonathan S. Tretheway declares and states as follows:

1. I am over the age of eighteen and competent to testify in these matters. I am the paralegal to Joan K. Mell. My testimony is based upon my personal knowledge. I rely also upon my education, training, and experience.

2. Following the Christmas Holiday of 2011, on December 27, 2011, I received by mail from Pierce County Public Records Officer, Joyce Glass a letter informing Ms. Mell that Ms. Glass had located 21 pages that were responsive to Ms. Mell's request for records designated as PA Reference No. 156/11-1369. Attached as Exhibit 1 is a true and correct copy of the letter from Joyce Glass dated December 23, 2011. This arrived during the

1 holidays when Ms. Mell was out of the office. The records were not produced or made
2 available that day.

3 3. When Ms. Mell returned after the New Year's Holiday, on January 3, 2012, I
4 was instructed by Ms. Mell to retrieve the records right away.

5 4. That morning, I contacted Ms. Glass by phone and requested to obtain the
6 records on that day. She informed me that she could not make the records available that day.
7 She said she had to get the records from storage, revealing they were not actually ready for
8 pickup. Because she said she could not make the records available that day, I asked her if I
9 could pick them up the following day. Based upon her schedule, she told me the records
10 could not be provided until the afternoon of January 4, 2012. We settled on 2:00 p.m. on
11 January 4, 2012, as the earliest time she would allow me to come pick up the records. I did
12 not act as if the matter was not urgent. I asked to get the records immediately on January 3,
13 2012, and was told by Ms. Glass that was not possible and that the records were actually still
14 "in storage" and thus not ready. Ms. Glass did not make the records available until January 4,
15 2012.

16 5 The Motion for Reconsideration in this case was filed in Thurston Superior
17 Court on January 3, 2012. See CP 733-772.

18 6. On January 4, 2012, I received an e-mail, forwarded to me from Greg
19 Overstreet of Allied Law Group, from Legal Assistant Christina M. Smith of the Pierce
20 County Prosecutor's Office, which informed Mr. Overstreet that Mr. Lindquist's phone
21 number had mistakenly not been fully redacted on page 3 of the Motion for Reconsideration.
22 Attached as Exhibit 2 is a true and correct copy of the e-mail from Ms. Smith forwarded to
23 me by Mr. Overstreet.
24

1 7. Mr. Overstreet requested that I have ABC Legal Services deliver another copy
2 of the original Motion for Reconsideration with Mr. Lindquist's phone number redacted on
3 page 3 and have the Court clerk replace the un-redacted page of the motion with the redacted
4 version of the motion as requested by the prosecutor's office.

5 8. Due to my work load on January 4, 2012, including my appointment to pick up
6 the records from Ms. Glass at 2:00 p.m., I told Mr. Overstreet that I would not be able to
7 accomplish the task that day but would do it the following day.

8 9. On January 5, 2012, just after 10:00 a.m., I sent by e-mail to ABC Legal
9 Services the copy of the Motion for Reconsideration with the one additional redaction and the
10 Declaration of Joan K. Mell in Support of Motion for Reconsideration. I asked ABC Legal
11 Services to request that the clerk replace the previously filed Motion for Reconsideration with
12 the un-redacted phone number with the redacted version. Attached as Exhibit 3 is a true and
13 correct copy of my e-mail to ABC Legal Services and the delivery slip.

14 10 In reviewing the e-mail correspondence regarding this issue, I located an e-
15 mail dated January 3, 2012, from Chris Roslaniec of Allied Law Group to Dan Hamilton and
16 Mike Sommerfeld, which delivered a PDF version of the Motion for Reconsideration that was
17 filed and served earlier that day on January 3, 2012 in a timely manner.

18 11 On January 5, 2012, just before noon Mr. Sommerfeld e-mailed Mr. Roslaniec
19 (and carbon copied Mr. Overstreet) inquiring about the Motion for Reconsideration
20 containing the un-redacted phone number that had been filed on January 3, 2012. By this
21 time, the Court had received the corrected brief. Mr. Overstreet responded to Mr.
22 Sommerfeld informing him that Ms. Mell's office was correcting the issue and carbon copied
23 Ms. Mell. Mr. Roslaniec then sent (reply all) the fully redacted version. Attached as Exhibit
24 4 is a true and correct copy of the e-mail exchange described in this paragraph.

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I declare under penalty of perjury that the foregoing is true and correct.

DATED this 18th day of April, 2013 at Fircrest, Washington.

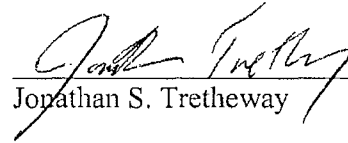

Jonathan S. Tretheway

Exhibit 1



Pierce County

Office of Prosecuting Attorney

MARK LINDQUIST
Prosecuting Attorney

REPLY TO:
CIVIL DIVISION
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160
FAX: (253) 798-6713

Main Office: (253) 798-6732
(WA Only) 1-800-992-2456

December 23, 2011

Joan K. Mell
1033 Regents Blvd. Ste 101
Fircrest WA 98466

RE: Public Records Request Dated November 28, 2011 Concerning
County Cell Phone Records of Mark Lindquist from September
2009 to June 2011; PA Reference No. 156/11-1369

Dear Ms. Mell:

I have completed my review of the search for the requested records. Twenty-one (21) pages were located that are responsive to your request and all of these pages will be made available to you for viewing per your original request. Please see the attached exemption log for additional information regarding the responsive records.

Please contact me to arrange a mutually agreeable appointment time to review these records. At the scheduled appointment, please plan to bring your own supplies. If, after viewing these records, you wish to obtain copies, copy costs will be provided for you at a later date. Copies will not be made until payment has been made, as soon as we are able.

If you prefer to pay for and receive all of these records, since you have in the past elected to bring payment and pick up copies, please provide me with three dollars and fifteen cents (\$3.15). Copies will be made for you after we receive payment, as soon as we are able. Due to staffing shortages during the holidays, it may take a day or two for the copies of the records to be available. If you prefer to have the records mailed to you, please provide me with a total of \$4.63 and I will provide them to you as soon as I am able.

If you have any questions, believe we have somehow misunderstood your request(s) or wish to clarify your request, please do not hesitate to contact me. Be advised, if I have not heard from you within thirty (30) days, I will consider this matter closed.

Sincerely

J. GLASS
Public Records Officer

JG

Enclosure


DECLARATION OF MAILING

I declare under penalty of perjury under the laws of the State of Washington that on this date I deposited a properly addressed envelope/document directed to the individual and address referenced above, into the receptacle for inter-departmental courier with instructions attached to affix prepaid postage and obtain postmark on this date. mails of the USA with appropriate pre-paid postage.

At time of deposit, said envelope/contained held the document to which this declaration is affixed and if any noted, the documents indicated.
Dated: 12/23/11 at Tacoma Washington.



Exhibit 2

From: Greg Overstreet <greg@alliedlawgroup.com> 
Subject: RE: Nissen v. PC -- Motion for Reconsideration
Date: January 4, 2012 12:01:03 PM PST
To: Chris Roslaniec <chris@alliedlawgroup.com>, "Jonathan S. Tretheway" <jonathan@3brancheslaw.com>
Cc: 'Joan Mell' <joan@3brancheslaw.com>

2 Attachments, 5 KB

Jonathan can get the fixed version to ABC tomorrow for filing.

Greg Overstreet



PLEASE NOTE NEW ADDRESS:
1204 - 4th Avenue East, Suite 6
Olympia, WA 98506

From: Chris Roslaniec
Sent: Wednesday, January 04, 2012 11:51 AM
To: Greg Overstreet; 'Jonathan S. Tretheway'
Cc: 'Joan Mell'
Subject: RE: Nissen v. PC -- Motion for Reconsideration

Here's a fixed version, sorry about that.

Chris Roslaniec



This email message and any attachments are confidential and may be privileged.
If you are not the intended recipient, please destroy all copies of this message
and any attachments without reading or disclosing their contents. Thank you.

From: Greg Overstreet
Sent: Wednesday, January 04, 2012 11:43 AM
To: 'Jonathan S. Tretheway'
Cc: Chris Roslaniec; 'Joan Mell'
Subject: RE: Nissen v. PC -- Motion for Reconsideration

OK. Please do it ASAP tomorrow.

Greg Overstreet



PLEASE NOTE NEW ADDRESS:
1204 - 4th Avenue East, Suite 6
Olympia, WA 98506

From: Jonathan S. Tretheway [mailto:jonathan@3brancheslaw.com]
Sent: Wednesday, January 04, 2012 11:03 AM
To: Greg Overstreet
Cc: Chris Roslaniec; 'Joan Mell'
Subject: Re: Nissen v. PC -- Motion for Reconsideration

Greg,

I will not be able to do it today, but I could do it tomorrow.

Jonathan

On Jan 4, 2012, at 10:42 AM, Greg Overstreet wrote:

Jonathan:

Can you take care of this?

Greg

Greg Overstreet

<image002.jpg>

PLEASE NOTE NEW ADDRESS:
1204 - 4th Avenue East, Suite 6
Olympia, WA 98506

From: Christina Smith [mailto:csmith1@co.pierce.wa.us]
Sent: Wednesday, January 04, 2012 10:37 AM
To: Chris Roslaniec; Greg Overstreet
Cc: Dan Hamilton
Subject: Nissen v. PC -- Motion for Reconsideration

Chris and Greg,

Mark Lindquist's phone number appears in the motion at page 3, line 3. Please make immediate arrangements to have it removed from the Court's file.

Thank you.

Christina M. Smith | Legal Assistant 3 | Pierce County Prosecutor's Office - Civil Division


955 Tacoma Avenue South, Suite 301, Tacoma, WA 98402
Phone: 253-798-7732 | Fax: 253-798-6713 | Email: csmith1@co.pierce.wa.us

P Think Green. Please help to maintain the wellbeing of the environment by refraining from printing this e-mail message unless necessary.

<image001.jpg>

Jonathan S. Tretheway
Paralegal to Joan K. Mell
III BRANCHES LAW, PLLC
1033 Regents Blvd. Ste. 101
Fircrest, WA 98466
253-566-2510 ph
281-664-4643 fx
jonathan@3brancheslaw.com

Exhibit 3

From: "Jonathan S. Tretheway" <jonathan@3brancheslaw.com> 
Subject: Documents for Delivery
Date: January 5, 2012 10:12:29 AM PST
To: oly@abclegal.com



4 Attachments, 2.1 MB

Please see attached documents for delivery to Thurston County Superior Court and JA Debbie Requa

Thank you,

Jonathan S. Tretheway
Paralegal to Joan K. Mell
III BRANCHES LAW, PLLC
1033 Regents Blvd. Ste. 101
Fircrest, WA 98466
253-566-2510 ph
281-664-4643 fx
jonathan@3brancheslaw.com



[Nissen; ABC....doc \(75 KB\)](#)



[2012-01-0....pdf \(696 KB\)](#)



[Nissen; Dec....pdf \(1.2 MB\)](#)



[2012-01-0...e.pdf \(84 KB\)](#)



LEGAL SERVICES
www.abcllegal.com

SEATTLE
633 YESLER WAY
SEATTLE, WA 98104
PH: 206-521-9000
800-736-7295
FAX: 206-625-9247
SEA@ABCLEGAL.COM

TACOMA
943 TACOMA AVE S
TACOMA, WA 98402
PH: 253-383-1791
800-736-7250
FAX: 253-272-9359
TAC@ABCLEGAL.COM

BELLEVUE
10655 NE 4TH
SUITE L101
BELLEVUE, WA 98004
PH: 425-455-0102
FAX: 425-455-3153
BEL@ABCLEGAL.COM

EVERETT
2927 ROCKEFELLER
EVERETT, WA 98201
PH: 425-258-4591
800-869-7785
FAX: 425-252-9322
EVE@ABCLEGAL.COM

OLYMPIA
119 W LEGION WAY
OLYMPIA, WA 98501
PH: 360-754-6595
800-828-0199
FAX: 360-357-3302
OLY@ABCLEGAL.COM

Messenger Service LAST DAY	FIRM NAME	PHONE	EXT #	EMAIL (SECRETARY)
	III BRANCHES LAW, PLLC	253-566-2510		JONATHAN@3BRANCHESLAW.COM
DATE/TIME 5:00 PM 1/05/2012	ADDRESS	ATTY	SECRETARY	
	1033 REGENTS BLVD., STE. 101	Joan Mell	Jonathan	
	CASE NAME	YOUR ABC ACCT. No.		
	Nissen v. Pierce County	105763		
	CAUSE No	CLIENT MATTER #	DATE	
	11-2-02312-2		4/18/2013 9:53 AM	

DOCUMENTS
DECLARATION OF JOAN K. MELL IN SUPPORT OF MOTION FOR RECONSIDERATION, CERTIFICATE OF SERVICE; CORRECTED MOTION FOR RECONSIDERATION TO REPLACE PREVIOUSLY MOTION FILED ON 1-3-2012

SIGNATURE REQUIRED ON DOCUMENTS :
 RETURN CONFORMED ABC SLIP ONLY :
 RETURN CONFORMED COPY :
 CONFORM ORIGINAL DO NOT FILE

OTHER INSTRUCTIONS
FILE ONE COPY WITH THURSTON SUPERIOR COURT; DELIVER BENCH COPY TO DEBBIE REQUA; PLEASE FILE THE REPLACEMENT MOTION FOR RECONSIDERATION WITH THE CLERK ONLY AND ASK THEM TO RELEAS THE RECONSIDERATION MOTION FILED ON 1-3-2012


1 THURSON COUNTY SUPERIOR COURT DEBBIE REQUA, JUDICIAL ASSISTANT 2000 LAKERIDGE DR. SW OLYMPIA, WA 98502	3
2	4

FILING	COUNTY	SUPERIOR COURT	DISTRICT COURT (INDICATE DISTRICT)	AUDITOR	Appeals COURT		FEDERAL COURT		SEA	TAC	STATE SUPREME COURT	SEC. STATE CORP.
					I-(SEA)	II-(TAC)	CIVIL	BANKRUPTCY				
	THURSTON	X			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ABC Legal Services, Inc. (ABC) assumes no liability for errors caused in whole or in part by the improper filling out of this messenger service request form, including but not limited to, omission of a last day date/time, filings not marked in the proper and designated filing boxes, illegible print or script, etc. All messenger requests are double-checked for accuracy and completion prior to returning to the requestor, however, it is the responsibility of the requestor to also check the completed request form for accuracy and to notify us immediately if there are any questions or discrepancies. Usage of this form constitutes a contract between the requestor and ABC and acknowledgment and acceptance by the requestor of the terms set forth above.

THIS FORM NOT FOR PROCESS

Exhibit 4

From: Chris Roslaniec <chris@alliedlawgroup.com> 
Subject: RE: Nissen Reconsideration
Date: January 5, 2012 12:01:34 PM PST
To: Greg Overstreet <greg@alliedlawgroup.com>, 'Mike Sommerfeld' <msommer@co.pierce.wa.us>, Dan Hamilton <dhamilt@co.pierce.wa.us>, "Christina Smith" <csmith1@co.pierce.wa.us>
Cc: "Stewart A. Estes" <sestes@kbmlawyers.com>, 'Joan Mell' <joan@3brancheslaw.com>

2 Attachments, 698 KB

Here is the redacted version.

Chris Roslaniec



This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please destroy all copies of this message and any attachments without reading or disclosing their contents. Thank you.

From: Greg Overstreet
Sent: Thursday, January 05, 2012 11:58 AM
To: 'Mike Sommerfeld'; Chris Roslaniec; Dan Hamilton; Christina Smith
Cc: Stewart A. Estes; 'Joan Mell'
Subject: RE: Nissen Reconsideration

Joan Mell's office is remedying this.

Greg Overstreet



PLEASE NOTE NEW ADDRESS:
1204 - 4th Avenue East, Suite 6
Olympia, WA 98506

From: Mike Sommerfeld [mailto:msommer@co.pierce.wa.us]
Sent: Thursday, January 05, 2012 11:56 AM
To: Chris Roslaniec; Dan Hamilton; Christina Smith
Cc: Stewart A. Estes; Greg Overstreet
Subject: RE: Nissen Reconsideration

Greg and Chris:

The unredacted phone number appears on page three (3) of your motion for reconsideration. Our legal assistant, Christina Smith, inquired about this yesterday by email, but received no response. Please advise as to whether you intend to remedy the problem.

Thank you.

-Mike

Michael Sommerfeld
Deputy Prosecuting Attorney
Pierce County Prosecuting Attorney - Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
PH: (253) 798-6385
FAX: (253) 798-6713

From: Chris Roslaniec [mailto:chris@alliedlawgroup.com]
Sent: Tuesday, January 03, 2012 4:14 PM
To: Dan Hamilton; Mike Sommerfeld
Cc: Stewart A. Estes; Greg Overstreet
Subject: Nissen Reconsideration

Dan,

Here are PDFs of what was filed today (you were likely served via legal messenger already). Regarding the date for the reconsideration hearing, we simply needed to note it between 14 days (Thurston Local Rule 59) and 30 days (CR 59) out. This date is not at all set in stone, and will be dependant on whether the Court even wishes to hear the Motion or summarily denies the same.

Also, regarding the Motion to File Overlength brief, we believe the 25 page limit applies but filed the very brief motion in an abundance of caution. Obviously, any length requirements would be applicable to both sides, and we would have no objection to the County filing a 25 page response.

Thank you,
Chris

Chris Roslaniec



2200 Sixth Avenue, Suite 770
Seattle, WA 98121
(206) 443-0202 (office)
(206) 428-7169 (fax)
www.alliedlawgroup.com

This email message and any attachments are confidential and may be privileged.
If you are not the intended recipient, please destroy all copies of this message
and any attachments without reading or disclosing their contents. Thank you.



[2012-01-0...pdf \(696 KB\)](#)

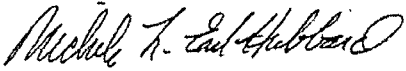
1 CERTIFICATE OF SERVICE

2 I certify under penalty of perjury under the laws of the State of Washington that on
3 April 19, 2013, I delivered a copy of the foregoing Declaration of Jonathan S. Tretheway and
4 this Certificate of Service by email pursuant to an electronic service agreement among the
5 parties with back up by U.S. Mail to the following:

6 Dan Hamilton
7 955 Tacoma Ave S., Suite 301
8 Tacoma, WA 98402-2160
9 dhamilt@co.pierce.wa.us

10 Stewart Estes
11 800 Fifth Avenue, Suite 4141
12 Seattle, WA 98104-03175
13 sestest@kbmlawyers.com

14 Dated this 19th day of April, 2013.

15 
16 _____
17 Michele Earl-Hubbard

APPENDIX F
To Corrected Reply Brief of Appellant

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IN THE WASHINGTON STATE SUPREME COURT

GLEND A NISSEN, an individual,
Appellant,

vs.

PIERCE COUNTY, a public agency; PIERCE
COUNTY PROSECUTOR'S OFFICE, a public
agency,
Respondents,
vs.
PROSECUTOR MARK LINDQUIST,
Intervenor/Respondent.

No. 87187-6

**DECLARATION OF CHRIS
ROSLANIEC; CERTIFICATE OF
SERVICE**

Chris Roslaniec declares and states as follows:

1. I am an attorney and in January 2012 was an Associate at Allied Law Group and co-counsel for Appellant Glenda Nissen before the trial court in this matter.
2. I am over the age of 18 and competent to testify to the matters hereto. I make this declaration on personal knowledge.
3. I have read the County's Brief of Respondent and its instant motions and supporting materials and see that Pierce County alleged in its Brief of Respondent before this Court that Ms. Nissen's Motion for Reconsideration had been filed on January 5, 2012, and that the Motion was untimely. I also note that the County has alleged in its filings that the re-

1 filing of a shortened Motion for Reconsideration on January 26, 2012, somehow made the
2 motion untimely and the appeal in jeopardy.

3 4. I also see that the County is asking to strike an email exchange I received that
4 illustrates the inaccuracies of the County's claims.

5 5. First, we filed the Motion for Reconsideration with the Thurston Superior
6 Court on January 3, 2012. See CP 733-772 (Motion for Reconsideration with filing stamp
7 showing filing with the court on January 3, 2012, at 4:53 p.m.). On January 3, 2012, I also
8 served Daniel Hamilton for the County and Stewart Estes for Mark Lindquist with a copy, and
9 signed, filed, and served a Certificate of Service to that effect. See CP 776-777 (Certificate of
10 Service dated January 3, 2012).

11 6. We redacted the last four digits of Mr. Lindquist's cell phone number in two
12 references on page 2 and one reference on page 8 (see CP 734 and 74) but inadvertently left
13 one reference on page 3 unredacted. See CP 735. Because of this oversight, the County
14 demanded that we re-file the brief with the redaction on page 3.

15 7. The County and Mr. Hamilton were well aware of the January 3, 2012, filing
16 as they had been served with it and requested that the phone number in it be removed from it
17 and the motion re-filed.

18 8. On January 5, 2012, we re-filed the same Motion with this one additional
19 redaction. It was still signed January 3, 2012, and was the exact same brief except that the
20 one reference on page 3 was just redacted with a black marker.

21 9. I understand that the County chose to designate as Clerks Papers the Motion
22 re-filed on January 5, 2012, at the County's insistence (signed January 3, 2012, and identical
23 to the January 3rd version except for one additional redaction on page 3) (see CP 633-672) and
24 did not designate the January 3, 2012, version of the Motion. However, the County then used

1 this January 5th filed-version to claim our motion had been late and the appeal untimely. In its
2 Brief of Respondent the County did not reveal that we had actually filed the Motion on
3 January 3, 2012, and that it had only been re-filed on January 5, 2012, at the County's
4 insistence with the one additional redaction.

5 10. I find it impossible to believe that Mr. Hamilton did not recall this history
6 when he wrote, signed, and filed his Brief of Respondent, as he was personally involved
7 throughout this case and he was properly served with the Motion for Reconsideration on
8 January 3, 2012, and received all of the emails discussed herein related to its filing, redaction,
9 and re-filing on January 5, 2012.

10 11. Further, the Court docket shows the Motion for Reconsideration was filed on
11 January 3, 2012.

12 12. I have read the County's instant motions as well as their Brief of Respondent
13 and see that the County has also made an issue of the filing of a shortened version of the
14 January 3, 2012, Motion on January 26, 2012, and has sought to strike an email exchange
15 between myself, Mr. Hamilton, and the trial court's clerk Debbie Requa precipitating that
16 filing. Attached hereto as **Exhibit A** is a true and correct of an email string of exchanges
17 between myself, Daniel Hamilton, Stewart Estes, Pierce County legal assistant Christina
18 Smith, and Ms. Requa for Judge Pomeroy related to the Motion to File Overlength Brief and
19 the filing of the shortened version of the Motion for Reconsideration on January 26, 2012, and
20 its hearing without oral argument on February 3, 2012.

21 13. In conjunction with the January 3, 2012, Motion for Reconsideration, I also
22 filed and served a Motion to File Overlength Brief. See CP 773-778 (Motion to File
23 Overlength Brief and Certificate of Service both dated January 3, 2012, and filed January 3,
24 2012, at 4:53 p.m.).

1 14. On January 24, 2012, Christina Smith, a legal assistant for Pierce County and a
2 part of the appellate legal team of Respondent herein, emailed Debbie Requa, the judicial
3 clerk to the trial judge the Honorable Christine A. Pomeroy, asking:

4 Has Judge Pomeroy had an opportunity to make a ruling on the Plaintiff's Motion
5 to File Over Length Brief? My attorney is wondering so that he knows how long
our responsive brief should be.

6 This email is part of the email string reflected in Exhibit A, at page 2. Mr. Hamilton, Mr.
7 Estes and I were all copied on this email message. **Id.**

8 15. On January 24, 2012, Ms. Requa emailed us back conveying Judge
9 Pomeroy's ruling on our motion to file overlength brief. This email also went to me, Mr.
10 Hamilton and Mr. Estes. The email stated:

11 After thorough consideration, Judge Pomeroy will authorize 5 additional pages
12 per side on the Motion for Reconsideration and the reply. Judge Pomeroy has
also decided that this matter will be heard without oral argument and that she will
13 render a decision after February 3, 2012.

14 See Ex. A at page 2.

15 16. On January 24, 2012, I emailed Ms. Requa asking:

16 Debbie,

17 Does Judge Pomeroy want a resubmission of Plaintiff's Motion or will it simply be
truncated after page 20?

18 See Ex. A at page 2. This message also was copied to Mr. Estes and Mr. Hamilton. **Id.**

19 17. On January 24, 2012, Ms. Requa responded to me and copying Mr. Estes and
20 Mr. Hamilton, stating "Please resubmit." See Ex. A at p.1.

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1 18. Daniel Hamilton then emailed Ms. Requa, me and Mr. Estes on January 24,
2 2012, at 4:19 p.m. stating:

3 The County would request such be done by plaintiff immediately so the [sic] we
4 know what to respond to in a meaningful time before our reply is due.

5 See Ex. A at p.1.

6 19. Ms. Requa wrote back stating, "Please resubmit your motion by noon on
7 Thursday, January 26th[, 2012]." See Ex. A at p.1. This email was also copied to Mr.
8 Hamilton and Mr. Estes. **Id.**

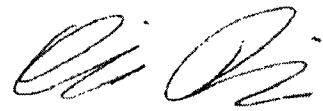
9 20. Ms. Requa then instructed me, in an email that also went to Mr. Hamilton and
10 Mr. Estes, not to renote the motion as it was being decided without oral argument. See Ex. A
11 at p.1.

12 21. All of the above messages were in a continuing email string, and all were
13 copied to Mr. Hamilton and Mr. Estes. See Ex. A at pp.1-2.

14 22. Thus, Mr. Hamilton and the County knew when Mr. Hamilton wrote, signed,
15 and filed the County's Brief of Respondent and his instant motions and declaration that the
16 trial court had granted the motion to file overlength brief, asked Ms. Nissen to file a new
17 shortened brief on January 26, 2012, and that Ms. Nissen had timely done so pursuant to the
18 court's instruction.

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Signed this 18th day of April, 2013 at Seattle, Washington.

21 
22 _____
23 Chris Roslaniec
24

Declaration of Chris Roslaniec

Exhibit A

Chris Roslaniec

From: Debbie Requa [REQUAD@co.thurston.wa.us]
Sent: Thursday, January 26, 2012 1:55 PM
To: Chris Roslaniec
Cc: Estes', 'Stewart A.; Hamilton, Dan; Greg Overstreet; Smith, Christina; Sommerfeld, Mike
Subject: RE: Nissen v. PC -- Motion for Reconsideration --11-2-02312-2, Judge Pomeroy

It is not necessary for you to renote the motion.

>>> Chris Roslaniec <chris@alliedlawgroup.com> 1/26/2012 11:33 AM >>>
Debbie,

The Amended Motion for Reconsideration is attached, though hard copies are being delivered via legal messenger.

Additionally, because there is no longer a live hearing for this matter as Judge Pomeroy will consider it without oral argument, should I renote the Motion with the Court, or is that unnecessary?

Thank you,
Chris

Chris Roslaniec



This email message and any attachments are confidential and may be privileged.
If you are not the intended recipient, please destroy all copies of this message
and any attachments without reading or disclosing their contents. Thank you.

From: Debbie Requa [<mailto:REQUAD@co.thurston.wa.us>]
Sent: Tuesday, January 24, 2012 4:28 PM
To: Hamilton, Dan; Chris Roslaniec; Smith, Christina
Cc: Estes', 'Stewart A.; Greg Overstreet
Subject: RE: Nissen v. PC -- Motion for Over Length Brief 1/20/12 -- 11-2-02312-2

Please resubmit your motion by noon on Thursday, January 26th. Thank you. Debbie

>>> Dan Hamilton <dhamilt@co.pierce.wa.us> 1/24/2012 4:19 PM >>>

The County would request such be done by plaintiff immediately so the we know what to respond to in a meaningful time before our reply is due.

From: Debbie Requa [<mailto:REQUAD@co.thurston.wa.us>]
Sent: Tuesday, January 24, 2012 4:17 PM
To: Roslaniec, Chris; Christina Smith
Cc: Estes', 'Stewart A.; Dan Hamilton; Overstreet, Greg
Subject: RE: Nissen v. PC -- Motion for Over Length Brief 1/20/12 -- 11-2-02312-2

Please resubmit.

>>> Chris Roslaniec <chris@alliedlawgroup.com> 1/24/2012 4:16 PM >>>
Debbie,

Does Judge Pomeroy want a resubmission of Plaintiff's Motion or will it simply be truncated after page 20?

Thanks,
Chris

Chris Roslaniec



This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please destroy all copies of this message and any attachments without reading or disclosing their contents. Thank you.

From: Debbie Requa [<mailto:REQUAD@co.thurston.wa.us>]
Sent: Tuesday, January 24, 2012 4:09 PM
To: Smith, Christina
Cc: Estes, 'Stewart A.'; Hamilton, Dan; Greg Overstreet; Chris Roslaniec
Subject: Re: Nissen v. PC -- Motion for Over Length Brief 1/20/12 -- 11-2-02312-2

After thorough consideration, Judge Pomeroy will authorize 5 additional pages per side on the Motion for Reconsideration and the reply. Judge Pomeroy has also decided that this matter will be heard without oral argument and that she will render a decision after February 3, 2012.

>>> Christina Smith <csmith1@co.pierce.wa.us> 1/24/2012 3:00 PM >>>
Hi Debbie,

Has Judge Pomeroy had an opportunity to make a ruling on the Plaintiff's Motion to File Over Length Brief? My attorney is wondering so that he knows how long our responsive brief should be.

Thanks!

Christina M. Smith | Legal Assistant 3 | Pierce County Prosecutor's Office - Civil Division
955 Tacoma Avenue South, Suite 301, Tacoma, WA 98402
Phone: 253-798-7732 | Fax: 253-798-6713 | Email: csmith1@co.pierce.wa.us



Think Green. Please help to maintain the wellbeing of the environment by refraining from printing this e-mail message unless necessary.



CERTIFICATE OF SERVICE

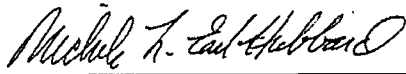
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I certify under penalty of perjury under the laws of the State of Washington that on April 19, 2013, I delivered a copy of the foregoing Declaration of Chris Roslaniec and this Certificate Of Service by email pursuant to an electronic service agreement among the parties with back up by U.S. Mail to the following:

Dan Hamilton
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800 Fifth Avenue, Suite 4141
Seattle, WA 98104-03175
sestes@kbmlawyers.com

Dated this 19th day of April, 2013.



Michele Earl-Hubbard